

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

DAVID KHAN, et al.,
Plaintiffs,
v.
JUSTIN ROGERS, et al.,
Defendants.

Case No. 17-cv-05548-RS (LB)

**ORDER DENYING PLAINTIFFS'
MOTION TO COMPEL**

Re: ECF No. 117

Plaintiffs David Khan and Nay Zar Tun Kyaw filed a motion to compel Inspector Darryl Holcombe of the Contra Costa County District Attorney's Office to respond to their interrogatories.¹ The court denies the motion.

A party may serve interrogatories only on other parties to the litigation. *See* Fed. R. Civ. P. 33(a)(1). They may not serve interrogatories on non-parties. *See id.* (Instead, a party may take discovery of a non-party by subpoena. *See* Fed. R. Civ. P. 45.) Inspector Holcombe is not a party to this litigation. The plaintiffs therefore cannot compel him to respond to interrogatories.²

¹ Pls. Mot. to Compel – ECF No. 117. Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Contrary to the plaintiffs’ suggestion, *id.* at 2 (¶ 5), there is no general obligation of public employees to respond to interrogatories in litigations to which they are not a party.

1 The plaintiffs claim that “[d]ue to the limitation of the courtroom and security regulations,
2 plaintiffs cannot proceed the deposition [sic] as we require that plaintiffs used the interrogatory
3 questions to obtain information including to Sr. Inspector Darryl Holcombe [sic] of Contra Costa
4 County.”³ It is not entirely clear to what deposition the plaintiffs are referring. To the extent that
5 the plaintiffs are claiming that they cannot depose Inspector Holcombe because of courtroom
6 limitations or security regulations, they have not supported their claim. Nothing prevents the
7 plaintiffs from taking depositions, subject to the Federal Rules of Civil Procedure and all orders of
8 the court. To the extent that the plaintiffs are claiming that they cannot sit for their own
9 depositions until they obtain discovery from Inspector Holcombe, their claim is meritless. The
10 plaintiffs do not have a right to unilaterally refuse to sit for properly-noticed depositions or to
11 condition their depositions on their obtaining discovery from a third party. The court repeats its
12 warning to the plaintiffs that if they do not sit for properly-noticed depositions, they may be
13 subject to sanctions, including terminating sanctions (dismissal of their case for failure to comply
14 with their discovery obligations).⁴

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16 **IT IS SO ORDERED.**

17 Dated: December 28, 2018



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19 LAUREL BEELER
United States Magistrate Judge

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³ *Id.* at 1 (¶ 2).

27 ⁴ *See* Order – ECF No. 114 at 5 (previously warning plaintiffs that they must sit for properly-noticed
28 depositions or risk being sanctioned).